

## **Desk Statement/Q and A Responses**

### **Subject: EPA, DC WASA agree to new safeguards for lead in drinking water**

- EPA Region III and the District of Columbia Water and Sewer Authority (WASA) reached agreement on a consent order that requires WASA to provide new safeguards for lead in drinking water. The agreement comes in the wake of an extensive EPA compliance audit that found multiple Lead and Copper Rule violations over the past several years.

“This agreement demonstrates the continued commitment by EPA and WASA to uphold public health protection in the Safe Drinking Water Act,” said EPA Deputy Regional Administrator Thomas C. Voltaggio. “WASA has agreed to move forward with the necessary corrective actions in a timely fashion.”

- EPA sought WASA’s agreement on this Order on Consent in order to allow the necessary corrective actions to proceed in a timely fashion and without legal contest. The Consent Order also enabled the Agency to secure several commitments beyond minimum compliance with the EPA lead and copper drinking water regulation, for the protection of public health.
- The comprehensive Order on Consent was completed under the Safe Drinking Water Act (SDWA) and requires the DC Water and Sewer Authority to address past violations associated with lead in DC’s drinking water. It is intended to reinforce the important safeguards provided for under the Act for public health. (See attached list of actions required).
- The order is the result of an extensive EPA audit, underway since February 8, 2004, of WASA’s compliance with the Lead and Copper Rule as far back as 1998. An on-site records review, two formal Information Requests, and detailed reviews of over 7200 pages of documents, and 3 electronic data disks, were involved in the audit.
- The Order is not a punitive measure. Under the SDWA requirements, a penalty is not authorized as a first step in an administrative enforcement action - thus no penalty is included here. The estimated value of remedies ordered is in excess of \$20 million, the largest portion of this is for additional lead service line replacements.
- The most significant finding in this Order is that tap water sample data from the 2000-2001 compliance period was not fully reported to EPA as required, and that WASA exceeded the action level for lead one year earlier than previously known and reported to EPA. This was a serious breach of the safeguards afforded by the lead and copper compliance monitoring. Had the data from 6 additional tap samples been included as



required by the LCR, WASA would have exceeded the action level in the summer of 2001. This would have triggered actions under the rule one year sooner including public education, accelerated compliance monitoring, and lead service line replacement. It would also have permitted the necessary adjustments to corrosion control treatment to have begun much earlier.

- In addition to the above, the Order cites a series of monitoring, reporting and public education violations stemming back to 1998. Some of these have been previously reported in the media and reported by EPA in a March 31 "show cause" letter. Others are newly discovered from the compliance audit.
- Customers of the WASA system still need to safeguard their health by following the tap flushing guidance and other consumer advice from the Health Department. The elevated lead levels are in the process of being resolved through corrosion control treatment changes which are underway. On June 1, orthophosphate began being applied to a portion of Northwest Washington as a partial test of the new process. If no unresolvable problems are encountered, the full system treatment will commence on or around the first week of August 2004.

#### **Background on the Action: .**

The Consent Order is the result of a special compliance audit by the Agency of WASA's compliance with the LCR dating as far back as 1998. This audit supplemented EPA's normal evaluation of compliance information from WASA. Typically, EPA receives periodic summary reports of actions by WASA at the end of designated compliance periods. This audit was a very resource intensive undertaking and uncovered several issues, the most notable being the lack of reporting of an Action Level Exceedance for Lead for the 2000-2001 time period.

EPA initially advised WASA on March 31 in a "show cause" letter that it had determined 6 apparent violations of the regulations and asked for a response. The continuing compliance audit uncovered more discrepancies than had been known to EPA in WASA's sampling program, public education, and the reporting of violations under the lead regulation. These are being addressed now in a comprehensive Order which cites EPA's compliance findings and orders WASA to take a series of actions to address the deficiencies. There is no up-front penalty associated with this Order however EPA can seek penalties and initiate civil judicial action should non-compliance with the Order be encountered. Remedies called for under the Order total \$20 million or more, primarily to address the year of lead service line replacement which was not accomplished.



## QUESTIONS and ANSWERS

Q.1. What action is EPA taking?

A. EPA has entered into an Administrative Order on Consent with the DC Water and Sewer Authority under the provisions of the Safe Drinking Water Act to enforce full compliance with the Lead and Copper Regulation. EPA is acting in its role as the primary enforcement agent for the national primary drinking water regulations in the District of Columbia (DC). The order is not a punitive action. It requires WASA to fully implement the provisions of the regulations as written, and to correct certain deficiencies identified. It carries no up-front penalty for past violations. By securing this Order with the consent of WASA, EPA has obtained commitments beyond minimum compliance with the regulation for the protection of public health.

Q.2. Why is this being announced now?

A. EPA Region III began an extensive compliance audit of DC WASA in February 8, 2004 based on the growing awareness of the extent of the lead contamination issue. The purpose was to evaluate every aspect of compliance with the Lead and Copper Rule and to take appropriate action. The audit covered a period of time from 1998 to the present. Based upon a very intensive review of documents and information, this Order reflects EPA's findings of violations to date and orders WASA to take corrective actions to ensure the violations do not reoccur and to protect public health.

Q.3. What are the most significant violations that EPA determined in its audit?

A. EPA determined from detailed reviews of records that WASA did not report to the Agency at least 6 samples during the 2000 to 2001 compliance period which would have triggered the Action level for lead one year sooner than reported to EPA. This lapse in reporting all collected tap water samples caused the public and the Agency to not be informed of a serious elevation of lead levels for at least one year. In addition, the additional sampling, public education and service line replacement were not accomplished as required by rule.

Secondly, WASA did not take the requisite number of samples during several compliance periods because its management data systems and controls on the sampling program did not identify that duplicate addresses were being sampled. WASA is unable to document that samples were collected at appropriate Tier 1 sampling sites as provided in the rule.

Third, WASA failed to notify the public and EPA of these violations and other issues in accordance with the Rule.

Q.4. Why didn't EPA identify these problems earlier in its compliance oversight role?

- A. There were several factors which contributed to the timing of EPA's identification of these problems. 1) EPA very recently received over 7200 pages of documentation, as well as electronic files on 3 data disks, which were required to be submitted under a two formal Information Requests (under Section 1445 of the SDWA). This new information dwarfed that which was available to EPA earlier for purposes of routine compliance reviews. The new information raised many questions and concerns about WASA's sampling regimens and data management systems, and yielded the findings today. The detailed reviews uncovered many more deficiencies in WASA's sampling and reporting program than were originally apparent. We also conducted an on-site review of records which is not a frequent compliance auditing activity.

Other factors which contributed were:

2) WASA has the direct responsibility to comply with the regulations and report to EPA at designated periods its compliance activities and any violations that occurred. This self-reporting method is common for many national environmental programs along with periodic compliance checking by the enforcement agency. WASA did not report many of these issues to us as is required under the regulation, thus special EPA attention or action were not triggered earlier.

3) In its oversight role, EPA regularly performs desktop reviews of summary reports provided by WASA generally at the end of designated compliance periods (6 month or 1 year intervals for example). WASA's reports were either incomplete (with unreported sampling data for instance) or not of sufficient detail to draw attention to these issues.

4) It appeared to EPA from the regular compliance reports from WASA that they were taking many actions in compliance with the LCR, thus we did not see the need to initiate a full audit earlier.

- Q. 5. If EPA had identified these issues earlier, would the problem have been solved by now?

- A. WASA's lack of reporting of an action level exceedance in the 2000-2001 time period was a serious breach in the safe drinking water safeguards. Had they reported the action level exceedance to EPA as required in July 2001, solutions to the elevated lead levels would have been underway that much sooner and likely have been fully implemented by now.

- Q.6. EPA reported in June 2003 to local authorities that WASA was in full compliance with the drinking water regulations. How can you now cite all of these violations?

- A. Based upon the information known to EPA at the time of that report, WASA appeared to be complying with the primary drinking water regulations. It appeared to us based upon summary information reports from WASA that they were taking the required actions to implement the Lead and Copper Rule when an action level was exceeded. They were implementing a lead service line replacement program, conducting a public education program, and performing additional sampling called for in the regulation. It was not until EPA initiated a very detailed and comprehensive look at supporting materials in WASA's

files did we determine that several compliance problems were occurring. EPA acted in a prompt manner to address this new information once it was known.

Q.7. EPA originally identified 6 areas of violation on March 31, 2004. How many violations have you now determined?

A. EPA has itemized over 12 categories of violations in the Order based upon its audit. Some of these have been reported on widely in the media and covered in our March 31 letter to WASA. Many others are newly discovered by the compliance audit. The violations are associated with WASA's:

- failure to take appropriate numbers of samples
- failure to conduct followup monitoring of partially replaced lead service lines
- failure to compliance with requirements for Public Service Announcements
- Failure to use mandatory language in written materials to customers
- failure to perform activities which an exceedance of the Lead Action Level occurred in the July 2000- June 2001 period
- Failure to report violations of the drinking water regulations.

Q. 8. If WASA did not fully report to the Agency, or falsified its reports to you, isn't this a criminal offense and why aren't you penalizing them for this?

A. EPA has not been able to determine to date all the circumstances surrounding the lack of full reporting of lead sampling data to EPA as required. It is EPA's policy not to confirm or deny the presence of a criminal investigation. We are taking action on the civil side based on what we know under the drinking water regulations, that the letter of the reporting requirement was not met. And we are directing WASA to correct this situation as soon as possible for future reports.

Q. 9. Has EPA done anything to prevent future problems in identifying these issues and making more timely compliance evaluations?

A. The Consent Order calls for several improvements in WASA's data management systems to avoid the reporting issues. At EPA, a modified Standard Operating Procedure has been put in place in Region III water programs to separate the compliance evaluation function from the state oversight function with regard to DC drinking water regulations. The Water Protection Division's Office of Compliance and Enforcement now has lead responsibility for compliance determinations. This provides a greater degree of independence of analysis and promotes the full use of our compliance and enforcement authorities under the Act to secure information needed to fully evaluate DC compliance. For example, mandatory Information Requests have been used in this recent audit.

Q10. What has WASA agreed to do in this Consent Order? Is this any different than what they are already committed to the Agency to do?

- A. EPA has ordered WASA to:
- ACCELERATE LEAD SERVICE LINE REPLACEMENT
    - replace an additional 1615 lead service lines to account for the missed year of reporting
    - all of the line replacements must be physical replacements as opposed to “test outs”
    - to update its inventory of lead service lines once each year and to determine if any of the 27000+ unknown materials in service lines are in fact lead; recalculate the number of service line required to be replaced annually (i.e. 7% of the revised total);
  - CORRECT ITS SAMPLING AND REPORTING PROGRAM FOR LEAD
    - ensure that the 72 hour testing after partial service line replacement is conducted
    - avoid duplicate sampling of the same residence in the same compliance period
    - put in place a data base management system to track samples and their linkage to service line criteria
    - Ensure 3 day turnaround of sample results to the homeowners after results are obtained
  - ENHANCE ITS PUBLIC EDUCATION PROGRAM
  - SUBMIT A COMPLIANCE CALENDAR
    - to ensure essential milestones of compliance are adhered to for the future

Q. 10 Why didn't EPA issue a financial penalty to WASA in this matter?

- A. The Safe Drinking Water Act does not authorize initial administrative enforcement actions to include a penalty for non-compliance. If this Consent Order is not adhered to, EPA may then go into federal court to seek penalty assessments. EPA may also initiate a judicial action under the SDWA to enforce the law. A civil judicial action would not be as responsive to the immediate violations occurring in the WASA system. This order constitutes prompt action to provide immediate correction of the issues involved. The corrective actions will require an investment by WASA of in excess of \$20 million. EPA has not ruled out additional action as necessary to enforce the law.

Q.11. What is the value of the corrective action called for in this Consent Order?

- A. EPA's actions will result in remedies undertaken by WASA or its agents in the range of \$20 million or more. The largest items being additional LSL replacements (1615 at a cost of \$16,150,000).

Q. 12. WASA claims that EPA provided “explicit advice” to their staff which condoned the non-reporting of samples in July 2001. Is this true? Is EPA at fault here?

- A. EPA could not verify that any staff provided instructions to WASA not to report tap water compliance samples. The Lead and Copper Regulation itself provides explicit descriptions of the criteria and procedure for the invalidation of samples taken for compliance monitoring. The procedures require a written authorization from the primacy agency (EPA) for the invalidation of samples. No such request was received by the

Agency nor granted according to our records. In addition, the regulation requires that all tap water samples be reported.

At least five of the non-reported samples were all above 100 ppb and should have been reported and thoroughly investigated in followup by WASA. EPA has found no documentation from WASA for the invalidation or lack of reporting of these important tap samples.

Q. 13. Is EPA penalizing the DC customers for WASA's errors?

A. The Consent Order calls for WASA to implement corrective actions envisioned in the Lead and Copper Rule when lead levels are exceeded. These rules apply to all regulated water suppliers. There is no up-front penalty associated with this action. EPA is directing WASA to complete actions already required by the rule.

